
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Adopting a Conflict of Interest Code for Community Parking District Advisory Boards

OVERVIEW

State law requires that the City Council adopt a Conflict of Interest Code for public officials that act in a decision-making capacity, or that may be in a position to materially affect municipal decisions. Public officials that are covered by a Conflict of Interest Code are required to disclose certain relevant financial interests by filing a *Statement of Economic Interest*, commonly known as the Form 700.

Numerous City employees, such as Deputy Chiefs, department managers, elected officials, and Council representatives, are required to disclose financial interests annually via Form 700. In addition, certain non-City employees that volunteer to serve on certain Boards and Commissions, such as Park and Recreation Board or the Independent Rates Oversight Committee, are also required to file a Form 700.

The California Fair Political Practices Commission (FPPC), the State agency responsible for administering regulations under the 1974 Political Reform Act, recently determined that Community Parking District (CPD) Advisory Boards are “local government agencies”, and thereby subject to a Conflict of Interest Code and financial disclosure requirements. This would require all current CPD Advisory Board members, and certain past members, to disclose financial interests by filing a Form 700. The FPPC has set a deadline of March 15, 2010 for the City to adopt a Conflict of Interest Code for CPD Advisory Boards, or be subject to penalties.

FISCAL/POLICY DISCUSSION

The City of San Diego currently has six Community Parking Districts. Governed by Council Policy 100-18, CPDs are established to “provide a mechanism whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts.”

Pursuant to Council Policy 100-18, approximately 45% of the total parking meter revenue generated within each CPD is allocated to that CPD on an annual basis.¹ These revenues may then be used for a variety of improvements and activities that increase the availability, and enhance the effective use of parking within the designated CPD.

Each Community Parking District is required to designate a legal entity to serve as the Advisory Board for the purpose of managing the District. Council Policy 100-18 states that the CPD Advisory Board may be “the existing board of a business improvement district, a redevelopment corporation, a community development corporation, or other nonprofit corporation approved by the Council.” The CPD Advisory Boards are responsible for developing an annual budget and improvement, and recommending such plan to the City Council.

Adopting a Conflict of Interest Code for the CPD Advisory Boards presents two significant issues. First, as discussed in the City Attorney’s December 8, 2009 Report (RC-2009-24), due to the complex structure of several of the CPD Advisory Boards, it is unclear exactly who would or should be subject to the Conflict of Interest Code. Second, the additional number of individuals who will be required to file a Form 700 will create a significant administrative burden for the City Clerk. These issues are discussed in greater detail below.

We also recognize that the requirement to disclose financial interests may adversely impact the public’s willingness to serve on CPD Advisory Boards. While the FPPC has set a firm deadline of March 15th for the adoption of a Conflict of Interest Code, there may still be avenues by which the City may work with the FPPC to modify the terms of the filing requirements. Some of these potential options are discussed in the City Attorney’s Report. While these options must be considered, the discussion that follows is based on the presumption that the March 15th deadline will need to be met.

Structure of CPD Advisory Boards

City Attorney Report RC-2009-24 provides an excellent overview of the current structure of the different CPD Advisory Boards and the challenge that these structures present in

¹ CP 100-18 specifies that 5% of the CPD allocation will be allocated to the City Manager to be applied to the City’s administrative costs of the program.

applying a Conflict of Interest Code. In general, the issue stems from the fact that some CPD Advisory Boards are served by certain sub-districts or committees that hold the decision-making authority for the use of district parking revenues. However, these sub-districts and committees are not recognized by Council resolution as the official district Advisory Board. This may result in a situation where certain individuals *are* filing a Statement of Economic Interest who *should not* be required to do so, or where individuals *are not* filing that *should* be required to do so.

The City Attorney's Report provides several options for addressing this situation, including a recommendation that the Council consider changing the designation of certain CPD Advisory Boards to recognize the sub-districts or committees that are actually acting in this capacity. It is important to note that issues related to the structure of the Advisory Boards do not need to be resolved prior to the March 15th deadline. ***The Council may wish to consider adopting the Conflict of Interest Code at the present time to meet the March 15th, 2010 deadline set by the FPPC, and provide direction to staff on how to most appropriately address issues related to the structure of certain CPD Advisory Boards for future consideration.***

Adopting a Conflict of Interest Code at the present time would require that all CPD Advisory Board Members file a Form 700. This would potentially result in the situation described above, where the incorrect individuals may be filing a Statement of Economic Interest. However, it would ensure that the City meet the deadline set by the FPPC and avoid any potential penalties.

Administrative Impacts

The City Clerk is designated as the Filing Official for the City of San Diego, and is charged with administering the Form 700 filing process. This process involves obtaining contact information of all required filers; training designated filing liaisons of the requirements under State law; sending notification of filing requirements, filing instructions and all necessary forms and documents; reviewing filing submissions for consistency; sending follow-up notification for non-respondents or for those that require amendments; comprehensive tracking of filing status for each required filer; and potential levying of fines and referral of non-respondents to the Ethics Commission.

Currently, the City Clerk administers the Form 700 filing process for over 2,500 individuals citywide, including over 400 from City Boards and Commissions. Based on the current structure of CPD Advisory Boards, it is estimated that an additional 80 – 100 filers will be required to submit a Form 700. While this may not appear to be a significant increase in the overall number of filers, the City Clerk has expressed concern about the impact that this additional requirement will have on the administration of this process. Administration of the Form 700 filing process is considerably more difficult for non-City employees, since there is no inherent structure of communication in place. The

process of locating, educating and corresponding with non-City employees is particular challenging.

Based on the increased requirements, the City Clerk has indicated that additional staffing resources may be required to effectively administer the Form 700 filing process once a Conflict of Interest Code is adopted for CPD Advisory Boards. Council Policy 100-18 provides that 5 percent of the total revenues allocated to the CPDs be allocated to the City Manager for administrative costs of the program. In recent years this administrative funding has totaled approximately \$114,000. It may be possible to amend Council Policy 100-18 to provide additional funding for the administrative costs associated with the Form 700 filing process. However, this would likely result in reduced revenue available for the CPDs. ***The Council may wish to consider amending Council Policy 100-18 to provide additional funding to cover the cost of administering the Form 700 filing process, should additional staffing resources be necessary.***

CONCLUSION

Recent rulings by the California Fair Political Practices Commission (FPPC) require the City Council to adopt a Conflict of Interest Code for the City's six Community Parking District (CPD) Advisory Boards. However, adopting such a Code presents certain challenges and administrative impacts. As discussed in City Attorney Report RC-2009-24, the current structure of certain CPD Advisory Boards makes it difficult to know exactly who would or should be subject to the Conflict of Interest Code. In addition, the increase in the number of individuals who would be required to submit a Statement of Economic Interest will have an administrative impact for the City Clerk, who is responsible for administration of the Form 700 filing process.

The City Council may wish to consider:

- 1. Adopting a Conflict of Interest Code at the present time to meet the March 15th, 2010 deadline set by the FPPC, and provide direction to staff on how to most appropriately address issues related to the structure of certain CPD Advisory Boards for future consideration;***
- 2. Consider amending Council Policy 100-18 to provide additional funding to cover the cost of administering the Form 700 filing process, should additional staffing resources be necessary.***

[SIGNED]

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